

**O'Donnell, Mary Beth**

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**From:** Orjiako, Oliver  
**Sent:** Monday, April 27, 2015 11:18 AM  
**To:** 'David McDonald'  
**Cc:** Euler, Gordon; O'Donnell, Mary Beth  
**Subject:** RE: 2016 Comprehensive Plan update



CP16#0129

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Will do Sir! For index.

-----Original Message-----

**From:** David McDonald [<mailto:david@mcdonaldpc.com>]  
**Sent:** Saturday, April 25, 2015 7:09 PM  
**To:** Orjiako, Oliver  
**Subject:** 2016 Comprehensive Plan update

Mr. Orjiako:

Please include the following documents in the record for the current update plan process if they are not part of the index.

[http://www.clark.wa.gov/thegrid/documents/PH\\_Washougal1.pdf](http://www.clark.wa.gov/thegrid/documents/PH_Washougal1.pdf)

[http://www.clark.wa.gov/thegrid/documents/WS071614\\_MEMO.pdf](http://www.clark.wa.gov/thegrid/documents/WS071614_MEMO.pdf)

Thank you,

David T. McDonald



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WASHINGTON

## COMMUNITY PLANNING

### Planning Commission Recommendation to Board of County Commissioners

FROM: Oliver Orjiako, Director  
PREPARED BY: Jose Alvarez  
DATE: May 28, 2014  
SUBJECT: CPZ2014-00007 Washougal UGA Removal

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**Proposed Action:** Amend the comprehensive plan and zoning maps to re-designate certain properties now in the Washougal Urban Growth Area as Agricultural (Ag-20), and to remove these properties from the urban growth area.

**Recommendation:** Planning Commission at a duly advertised public meeting on May 15, 2014 voted 5 to 0 to recommend approval of the proposal.

**Background:** For purposes of Clark County's 2007 comprehensive plan update, the properties subject to this proposal were known as Agriculture Viability Study Area WB. Prior to the update, both parcels were designated and zoned for agriculture (AG-20). As part of the 2007 update, Clark County brought the area within the Washougal Urban Growth Area, and re-designated the land for urban uses. The properties are currently designated Industrial (I) within an Urban Holding Overlay District (UH-40) and zoned Business Park (BP).

John Karpinski, Clark County Natural Resources Council and Futurewise appealed the 2007 plan update to the Western Washington Growth Management Hearings Board (Growth Board). On June 3, 2008, the Growth Board held that certain of the re-designations, including the re-designation of Area WB from agricultural to urban, had failed to comply with the Growth Management Act. Clark County and various other parties appealed the Growth Board's ruling to Clark County Superior Court.

In May of 2009, Superior Court Judge Harris reversed the Growth Board's ruling with respect to Area WB. Karpinski, et al., appealed the Superior Court decision to the Washington State Court of Appeals. In April of 2011, the Court of Appeals remanded the Growth Board's decision on Area WB for further consideration of all WAC factors.

On March 11, 2014, the Growth Board issued its order on remand, ruling that Area WB had been improperly removed from agricultural designation, and ordering Clark County to bring the plan designation into full compliance with GMA.

The effects of the proposal, if approved, will be to return the subject properties to their comprehensive plan designations and zoning as those existed immediately before the

2007 Plan update, to remove the properties from the Washougal UGA, and to bring the county into compliance with GMA.

**General information regarding subject property:**

Area WB is comprised of two parcels totaling 118 acres, 79 and 39 acres respectively.

Parcel number(s): 129825000 (79ac) and 130039000 (39 ac)

Location: South of SE 20<sup>th</sup> St and East of SE Jennings Road

Owners: Daley Dennis W & Hackett Carol et al.  
Hickey Diane M Trustee

**Existing land uses offsite:**

North: Large lot rural residential

South: Large lot residential in urban holding area

East: Large lot rural residential

West: Large lot residential in urban holding area

## **APPLICABLE CRITERIA, EVALUATION OF REQUEST AND FINDINGS**

### **CONSIDERATION OF OUT-OF-CYCLE AMENDMENTS**

Revisions to the comprehensive plan may be considered more frequently than once per year under the following circumstances:

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- d. To resolve an appeal of a comprehensive plan filed with a Growth Management Hearings Board or from a court of competent jurisdiction. (40.560.010Q(1))

**Finding:** The purpose of the proposed revisions to the comprehensive plan and zoning map is to finally resolve, the appeal of the 2007 plan update by coming into compliance with the ruling from the Growth Board. See discussion in Background, above. This proposal is properly considered at this time.

### **CRITERIA FOR ALL MAP CHANGES**

In order to comply with the Plan Amendment Procedures in the Clark County Unified Development Code (UDC 40.560.010), requests to amend the Comprehensive Plan land use map must meet all of the criteria in Section G, Criteria for all Map Changes. Requests to amend the zoning map must meet similar criteria (UDC 40.560.020G). For clarity, Criteria A-E, following, summarize all of the applicable criteria required for both plan and zoning map amendments.

- A. The proponent shall demonstrate that the proposed amendment is consistent with the Growth Management Act (GMA) and requirements, the countywide planning policies, the Community Framework Plan, Clark County 20-Year Comprehensive Plan, and other related plans. (See 40.560.010G(1) and 40.560.020G(2).)*

#### **Growth Management Act (GMA).**

##### **1. Compliance with the decision of the Growth Board.**

On remand from the Court of Appeals to further consider whether Area WB has long term commercial significance for agricultural production based on the factors set forth in former WAC 365-190-050-1, the Growth Board concluded that Area WB has long term commercial significance for agricultural production.

**Finding:** The proposed re-designation of Area WB would comply with the Growth Board's ruling that GMA requires agricultural designation of these properties.

##### **2. GMA definition of agricultural land.**

RCW 36.70A.030(2) defines agricultural land as follows:

***“Agricultural land” means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by \*RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.***

**RCW 36.70A.030(10) states:**

***“Long-term commercial significance” includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas, and the possibility of more intense uses of the land.***

**The Department of Commerce has adopted guidelines for classifying agricultural lands in keeping with statutory requirements. The guidelines, at WAC 365-190-050, provide as follows:**

***(1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:***

***(a) The availability of public facilities;***

***(b) Tax status;***

***(c) The availability of public services;***

***(d) Relationship or proximity to urban growth areas;***

***(e) Predominant parcel size;***

***(f) Land use settlement patterns and their compatibility with agricultural practices;***

***(g) Intensity of nearby land uses;***

***(h) History of land development permits issued nearby;***

***(i) Land values under alternative uses; and***

*(j) Proximity of markets.*

The Growth Board held that the WB properties have prime soils, and are capable of being farmed; that the area is not characterized by urban growth, nor adjacent to land characterized by urban growth; and that the evidence did not show that the land no longer has long-term commercial significance, based on criteria from WAC 365-190-050(1).

**Finding:** The subject properties meet the definition of agricultural lands set forth in GMA, as implemented by the WAC guidelines, and construed by the Growth Board.

**Community Framework Plan and Countywide Planning Policies.**

The policies most applicable to this proposal are set forth in 3.0 Rural and Natural Resources Element. That element states that its policies “are to ensure the conservation of agricultural, forest, and mineral resource lands, and protect these lands from interference by adjacent uses which affect the continued use, in the accustomed manner, of these lands for production of food, agricultural products, or timber, or the extraction of minerals.”

*Policy 3.1.0 The county and its jurisdictions at a minimum are to consider agricultural land based on Washington Administrative Code (WAC) 365-190-050.*

**Finding:** The proposal to re-designate Area WB as agricultural lands will comply with the WAC guidelines set forth at section 365-190-050, in that the WB properties have prime soils, the area is not characterized by urban growth, nor adjacent to land characterized by urban growth; and that the evidence did not show that the land no longer has long-term commercial significance for agriculture.

*Policy 3.1.3 Identify agricultural land on parcels currently used or designated for agricultural use and provide these parcels special protection.*

**Finding:** This proposal will provide protection to that land to maintain and encourage the agricultural industry in that area as opposed to opening it to urban uses.

*Policy 3.1.5 Encourage the conservation of large parcels which have prime agricultural soils for agricultural use and provide these parcels special protection.*

**Finding:** Area WB is made up of two parcels that have prime soils, and are 38 acres and 79 acres. This proposal will protect that land by limiting land divisions and preventing development that is inconsistent with agriculture.

*Policy 3.1.7 Develop a range of programs (such as purchase of development rights, easements, preferential tax programs, etc.) to provide property owners incentives to maintain their land in natural resource uses.*

**Finding:** The current use tax deferral program for farmland provides an incentive to maintain the land in agricultural use.

**Clark County 20 Year Comprehensive Plan.** The Clark County Comprehensive Plan contains an agriculture goal and policies adopted pursuant to that goal.

**GOAL:** *To maintain and enhance productive agricultural lands and minimize incompatibilities with adjacent uses.*

### **3.4 Policies**

- 3.4.2 *Minimum parcel size should be adequate to allow reasonable and economic agricultural use.*
- 3.4.3 *The primary uses in agricultural areas shall be commercial or non-commercial agriculture, forest management, mineral extraction, ancillary uses and other non-agricultural related economic activities relying on agricultural lands.*

**Findings:** Re-designating Area WB as agricultural land and removing it from the urban growth area will maintain a large minimum lot size, for more economic agricultural use. In addition, it will prevent incompatible uses on farmland, by prohibiting those uses which would ordinarily be allowed on urban lands. The proposal complies with the comprehensive plan goal to maintain and enhance productive agricultural lands.

**Conclusion:** This proposal complies with criterion A.

- B. The proponent shall demonstrate that the designation is in conformance with the appropriate locational criteria identified in the Clark County Comprehensive Plan and the purpose statement of the zoning district. (See 40.560.010G(2) and 40.560.020G(2).)**

#### *Agriculture Lands*

*These lands have the growing capacity, productivity, soil composition, and surrounding land use to have long-term commercial significance for agriculture and associated resource production. This designation is implemented by the Agriculture (AG-20) base zone.*

#### *Purpose.*

*Agriculture 20 (AG-20) District. The purpose of the Agriculture 20 district is to encourage the conservation of lands which have the growing capacity, productivity, soil composition, and surrounding land use to have long-term commercial significance for agriculture and associated resource production.*

**Finding:** The Growth Board, on remand from the Court of Appeals, re-affirmed its prior order that these lands are properly characterized as agricultural, based on their soil characteristics and a lack of adjacent and surrounding urban development. The proposal satisfies the locational criteria and purpose statement, and satisfies Criterion B.

- C. *The map amendment or site is suitable for the proposed designation and there is a lack of appropriately designated alternative sites within the vicinity. (See 40.560.010G(3).)***

**Finding:** The Growth Board's decision addressed Area WB directly, and did not indicate that the agricultural designation of any alternative site would substitute for returning Area WB to AG-20 classification. The proposal satisfies this criterion.

- D. *The plan map amendment either; (a) responds to a substantial change in conditions applicable to the area within which the subject property lies; (b) better implements applicable comprehensive plan policies than the current map designation; or (c) corrects an obvious mapping error. (See 40.560.010G(4)and 40.560.020G(3).)***

**Finding:** The Growth Board concluded that Area WB is agricultural land of long-term commercial significance under GMA, the proposed plan map amendment and zone change better implement the comprehensive plan policy requiring maintenance and enhancement of productive agricultural land than the current urban designation. Criterion D is satisfied.

- E. *Where applicable, the proponent shall demonstrate that the full range of urban public facilities and services can be adequately provided in an efficient and timely manner to serve the proposed designation. Such services may include water, sewage, storm drainage, transportation, fire protection and schools. Adequacy of services applies only to the specific change site. (See 40.560.010G(5)and 40.560.020G(4).)***

**Finding:** Criterion E is not applicable to this proposal, as it removes land from the UGA.



**RECOMMENDATION AND CONCLUSIONS**

The Planning Commission recommends **Approval** of this proposal to the Board of County Commissioners. Re-designating Area WB as agricultural land (AG-20) and returning these lands to appropriate zoning complies with the applicable state and county criteria. This action will finally resolve the appeal of the 2007 plan update and enable the property owners and the county to move forward with planning appropriate for the area and the circumstances.

<b>COMPLIANCE WITH APPLICABLE CRITERIA</b>		
	<b>Criteria Met?</b>	
	<b>Staff Report</b>	<b>Planning Commission Findings</b>
<b>Criteria for All Map Changes</b>		
<b>A. Consistency with GMA &amp; Countywide Policies</b>	Yes	Yes
<b>B. Conformance with Location Criteria</b>	Yes	Yes
<b>C. Site Suitability and Lack of Appropriately Designated Alternative Sites</b>	Yes	Yes
<b>D. Amendment Responds to Substantial Change in Conditions, Better Implements Policy, or Corrects Mapping Error</b>	Yes	Yes
<b>E. Adequacy/Timeliness of Public Facilities and Services</b>	NA	NA
<b>Recommendation:</b>	<b>Approval</b>	<b>Approval</b>



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## COMMUNITY PLANNING

### MEMORANDUM

TO: Board of County Commissioners  
FROM: Oliver Orjiako, Director  
DATE: June 26, 2014  
SUBJECT: Resource land designation

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### INTRODUCTION

The Board of County Commissioners' office has received numerous e-mails from Clark County Citizens United (CCCU) with regard to zoning in rural Clark County. CCCU has raised arguments indicating that the county should revisit the Agriculture and Forest resource land designations and the smaller minimum parcel sizes of 1 and 2.5 acres that were in effect prior to the adoption of the first comprehensive plan under the Growth Management Act (GMA) in 1994.

Staff has revisited records dating to the adoption of the 1994 comprehensive plan and subsequent appeals. This memo tracks separately the historical context from approximately 1993-1998 related to each of the two issues: designation of resource land and rural parcel size. For each issue the chronology includes the lead up to adoption of the comprehensive plan followed by appeal to the Growth Management Hearings Board (GMHB), followed by appeal to Superior Court and Clark County's responses to the appellate rulings.

### Designation of Resource Land

In 1993, the Board of County Commissioners convened a Rural and Natural Resource Lands Advisory Committee. Two sub-committees were formed, the Farm Focus Group and the Forest Focus Group, and were charged with classifying and designating farm resource lands and forest resource lands, respectively. The work of the Advisory Committee was based in large part on the minimum guidelines required by the growth management legislation as found in Chapter 365-190 of the Washington Administrative Code (WAC). In their respective reports they cite guidelines issued by the Washington State Department of Community Development; these are the same guideline that are in the WAC 365-190.

The Farm Focus Group issued its report December 9, 1993. The report includes the delineation methodology that was used by the group. The group used the criteria as set

out by the Washington State Department of Community Development (DCD) to designate agricultural land. The agency criteria required use of the land capability classification system of the U.S. Department of Agriculture Soil Conservation Service as a prime factor. WAC 365-190-050 also provides ten indicators to use in the designation assessment. This is addressed in an October 25, 1994 memo to the Planning Commission from Jeri Bohard, GMA Section Supervisor.

The Forest Focus Group issued its report December 5, 1993. Forest lands designation also had specific criteria to be used, including quality soils. However, to classify forest land the DCD criteria required the use of the private forest land grading system from the Department of Revenue. In addition, WAC 365-190-060 had seven other indicators to consider in designating forest land.

The Rural and Natural Resource Lands Advisory Committee began the process of designating Agri-Forest for areas north of the East Fork of the Lewis River. The process was completed by staff subsequent to the issuance of the draft supplemental environmental impact statement (DSEIS). The Agri-Forest designation was added for the following reasons per memo from Craig Greenleaf, Planning Director, to the Planning Commission dated October 13, 1994:

- *The committee separated the selection process into independent determinations of agriculture and forestry characteristics, leaving some land inappropriately considered;*
- *The farm focus group did not include heavily forested lands; some of those lands were commingled with agricultural lands and were overlooked by both focus groups;*
- *Factors which are not objective tended to carry less weight (e.g. Settlement patterns and their compatibility with agricultural practices.*
- *The forest focus group discounted the role of soils as a factor because they were found to be uniformly of high quality;*
- *The farm focus group's failure to agree on "long term commercial significance" lead to severe difficulty in defining agricultural lands on a consensual basis and narrowed the committee's outcome to things over which agreement was reached.*

#### Growth Management Appeals

CCCU was one of 67 appellants that filed appeals of the adopted comprehensive plan with the Growth Management Hearings Board in 1994. CCCU raised the following issues in its petition to the Hearings Board:

- *Did the County's designation of agricultural resource lands comply with the GMA?*
- *Did the County's designation of ag-forest resource lands comply with the GMA?*
- *Did the County's designation of forest resource lands comply with the GMA?*

In its Final Order and Decision dated September 9, 1995 the GMHB affirmed the County's designation of agricultural, forest and agri-forest resource lands.

*"Our review of the record finds significant support for the ultimate conclusion of the BOCC that the agricultural land and forestry land designations were lands of 'long-term commercial significance' Petitioners have failed to carry their burden of proving the decision was an erroneous application of goals and requirements of the GMA. The County chose a decision that was within the reasonable range of discretion afforded by the act."*

### Superior Court Appeals

CCCU and others appealed the GMHB decision to Superior Court. The court ruled on April 4, 1997 that the Agri-Forest designation was invalid but it upheld the GMHB decision on resource land. The order found:

- *The EIS issued by the County was in violation of SEPA because the Agri-forest designations were disclosed subsequent to the publication of the Final EIS;*

The court also stated:

*"There is substantial evidence in the record to support the County's designation of agricultural resource lands."*

The County did not appeal the Superior Court decision and instead began a process to comply with the Court's order on remand to the Hearings Board. The County put together two task forces, one to deal with Agri-Forest and the other with Rural Centers.

### **Rural Parcel Size**

The adopted 1994 comprehensive plan had established only one rural (non-resource) zone, R-5. The staff recommendation to the Planning Commission had been 5-acre minimum south and west of the Rural Resource line (East Fork of the Lewis River) and 10 acres north and east of the rural resource line. Staff had also recommended eliminating the rural centers due to GMHB decisions in which the OFM forecasts were determined to be both a floor and a ceiling.

### Growth Management Appeals

CCCU raised issues identified below related to the parcel sizes in the rural area.

- *Did the County's designation of land use densities in rural areas comply with the GMA?*
- *Does a comprehensive plan that would make more than seventy percent (70%) of the properties in rural areas non-conforming comply with the GMA?*
- *Does a comprehensive plan which bases its land use densities strictly on OFM population projections comply with the GMA, when the County knows or should have known that those population projections underestimate anticipated population growth?*
- *May the County disregard its adopted framework plan policies when it adopts a comprehensive plan under the GMA and, if not, is the comprehensive plan consistent with the County's adopted framework plan policies?*
- *Does a comprehensive plan that ignores existing conditions in rural areas comply with the GMA?*
- *Did the County comply with the requirements of the State Environmental Policy Act, RCW Ch. 43.21C (SEPA)?*

The GMHB decision stated there was no evidence in the record to support 5-acre minimum parcel size designation north of the Rural Resource line. The GMHB had two major concerns. First, that the 5-acre size was insufficient to buffer adjacent resource lands, and second was the amount of parcelization that had occurred in the rural and resource areas between 1990 and 1993.

*"At the time of adoption of the emergency moratoria on clusters, subdivision planned unit developments, and large lot developments in April of 1993, an estimated 19 square miles of segregations had occurred since May 1, 1990... There are implementation measures the County could take to level this playing field and reinject some fairness into the situation... If they do not, the unfair position that many of these site-specific petitioners find themselves in will be perpetuated."*

*"...the farm focus group established what became known as the 'rural resource line'. South and west of this resource line, the focus group, staff, and the Planning Commission recognized that segregations and parcelizations had occurred involving thousands of lots ranging from 1 to 2.5 acres....A major omission that the BOCC made in establishing a 5-acre minimum lot size for all rural areas was ignoring the differences that existed north and south of the 'resource line...The BOCC did not give appropriate consideration to the evidence contained in their own record concerning the need for greater levels of buffering for resource lands, particularly north of the resource line. They did not appropriately consider the impacts of the parcelizations and segregations that had occurred since 1990."*

These issues were ultimately addressed through the recommendations of the Agri-Forest and Rural Center task forces described below.

### Superior Court Appeals

In its April 1997 ruling on CCCU's appeal from the GMHB, the Superior Court stated that the County needed to provide a variety of rural densities to be compliant with the GMA, and that could be achieved by designating rural centers as envisioned in the Community Framework Plan.

- *The removal of rural activity centers was not addressed in the EIS; and*
- *Rural development regulations were inconsistent with GMA; and*
- *The eradication of the rural activity centers violates the planning goal requiring a variety of residential densities;*

### Agri-Forest and Rural Centers

Upon receipt of the remand from the GMHB to comply with the Superior Court ruling the BOCC convened a 13-member task force which in March of 1998 reported its recommendations on re-designating the 35,000 acres of Agri-Forest designated land. The task force recommended approximately 99% of the land be designated, R-5, R-10 and R-20. There were two minority report issued by members of the task force. One questioned the designation of 3,500 acres to rural as opposed to resource use, and the other recommended 5- and 10-acre zoning similar to the 1980 plan. The BOCC adopted the original task force recommendation. In May of 1999, the GMHB upheld the re-designation of the 35,000 acres except for the 3,500 acres mentioned in the minority report and remanded that back to the county.

*"We find that Clark County is not in compliance with the GMA as relates to the 3,500 acres. In order to comply with the Act, the County must review the 3,500 acres in light of the Supreme Court's holding in Redmond and the appropriate criteria stated therein to determine if RL designation is appropriate."*

The County subsequently reviewed the designation of the 3,500 acres and found that the task force's original recommendation of a non-resource designation of R-5, R-10 and R-20 was appropriate per Resolution 2003-09-12.

The BOCC also convened a task force to address the rural centers. Ultimately, the BOCC approved six rural center designations and boundaries which were upheld by the GMHB in a decision of May 1999.

### **Summary**

Regarding resource designations of agriculture and forest land both the GMHB and Superior Court decisions affirmed the County's designation as compliant with the GMA. The AG-20, FR-40 and FR-80 in place today are the same as adopted in 1994 and upheld by both the GMHB and Superior Court. The Agri-Forest designation was deleted

and those 35,000 acres were re-designated to R-5, R-10 and R-20 uses to comply with the Court's decision.

The updates of the 2004 and 2007 comprehensive plans re-adopted the previous land use actions consistent with GMA. While Clark County has been successful in some instances in de-designating agricultural lands to non-resource uses, the requirements for doing so are very difficult to meet. Whether to re-consider resource designations and rural lot sizes is ultimately a policy decision for the BOCC in compliance with state law.